

April 24, 2023

ACC-9/TFI-8/NITL-6

306497

Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

ENTERED
Office of Proceedings
April 24, 2023
Part of
Public Record

Re: STB Docket No. FD 36500, Canadian Pac. Ry. Ltd, et al. -- Control -- Kansas City Southern, et al.

Dear Ms. Brown:

On behalf of the American Chemistry Council, The Fertilizer Institute, and The National Industrial Transportation League (collectively the "Joint Associations"), I am writing in support of the requests submitted by the Commuter Rail Division of the Regional Transportation Authority d/b/a Metra ("Metra") and BNSF Railway Company ("BNSF") on April 2, 2023, and April 19, 2023, respectively. Both Metra and BNSF have requested clarifications of the oversight condition in the Board's March 15, 2023 Decision ("Decision No. 35") approving the merger of Canadian Pacific Railway Limited and Kansas City Southern ("Applicants").

The Joint Associations specifically support the following requests:

- Clarify or confirm that the data Applicants are required to submit by Appendix B of Decision No. 35 will be made available to interested parties.
- Clarify or confirm that third-party participation will be permitted in the annual oversight process.
- Clarify or confirm that the Board will conduct the oversight proceedings consistent with past merger precedent, including requiring the Applicants to submit an annual progress report and to make 100% traffic waybill tapes available in the manner described on pages 3-4 of BNSF's April 2, 2023 filing (BNSF-16).
- Direct Applicants to retain the information described on page 5 of BNSF-16 that could be sought through discovery in any dispute regarding Applicants' compliance with the vertical competition and open gateway conditions imposed by the Board but expand the list to encompass all gateways where the Applicants would have a longer haul post-merger. The BNSF request is narrower because BNSF has expressed vertical competition concerns only for U.S.-Mexico cross-border movements in this proceeding. By comparison, the Joint Associations have expressed concern with protecting all gateways where the Applicants would have a longer haul post-merger and, most importantly, the Board imposed conditions to protect all such gateways.

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Please contact us if you have any questions.

Respectfully submitted,

Thompson Hine LLP

/s/ Jeff Moreno

Jeffrey O. Moreno
Karyn A. Booth
Jason D. Tutrone

Attorneys for the Joint Associations

cc: All Parties of Record

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CERTIFICATE OF SERVICE

I hereby certify that I have caused the foregoing Letter of the Joint Associations to be served electronically or by first-class mail, postage pre-paid, on the Secretary of Transportation, the Attorney General of the United States, Applicants' representatives, Administrative Law Judge Thomas McCarthy, and all parties of record in this proceeding.

/s/ Jeffrey Moreno
Jeffrey O. Moreno
Attorney for the Joint Associations

April 24, 2023
